IN THE

UNITED STATES

CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

THE STEAMBOAT EUGENE, GASTON JACOBI and CHARLES RUFF,
Libellants and Appellees,

JOEL P. GEER, *Claimant and Appellant,*

WALTER M. CARY, FRED M. LYONS and EDWARD J. KNIGHT,
Intervenors and Appellees.

PETITION FOR REHEARING

JOHN C. HOGAN AND
PATTERSON & EASLY,
Proctors for Appellees.

SEATTEE, WASHINGTON.

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The appellees herein respectfully petition the Court for a rehearing and in support of said petition say:

That the uncontradicted evidence in this case shows, that the Eugene and the Bristol were to make the trip from Victoria to St. Michaels together, the Eugene in tow of the Bristol, and that the vessels started in this manner

and proceeded about 600 miles on the voyage, when the voyage was abandoned on account of the unseaworthy condition of the Eugene. In the trial Court two cases were cited and relied upon which by oversight were omitted from the original brief, and upon a point which was also one of the principal points argued in the case below.

From the foregoing Statement of Facts we contend that the Bristol and the Eugene were in law, one ship. In the case of *The Civilta and The Restless*, *103 U. S. R.*, *699*, it was decided that a tug and ship in tow, were in law but one vessel. If this is the law then the Bristol with the Eugene in tow, when they started on the voyage to St. Michaels were but one vessel, and if the goods and passengers were on either vessel they had a lien against either one or both of the vessels. The question whether the appellees' goods and the appellees themselves were on one or the other of the vessels constituting the combined vessel would be as immaterial as the question whether their goods were on the deck or in the hold of the vessel. The Eugene was a part of the vessel and she is liable just the same as any other portion of either vessel or of their apparel or tackle would have been. The goods and passengers were on board the combined vessel and the vessel that furnished the motive power and the Eugene in tow were a part and parcel of the whole affair and each part was liable for breach of contract.

The case of the *Wm. Murtagh*, *in 17th Fed. Rep.*, *259*, is very similar to the one at bar. In that case the

tug Wm. Murtagh was towing the barge A. Servis loaded with coal and the barge on account of her unseaworthiness sank and the owners of the coal libeled the tug for the value. Tha coal belonged to one person; the sunken barge to another; and the tug to another. It was held (opinion by Justice Brown) that the owner of the tug and tow, both concurring in the trip, should be held liable, and that the owner of the coal was entitled to a lien against the tug for the full amount. No part of the coal was ever on board the tug, but nevertheless the tug was held responsible as a part of the expedition.

Upon the authority of these two cases it is respectfully submitted that in the case at bar the Eugene was a part of this expedition; the owners of the Bristol and the Eugene were both concurring in a common expedition, and for the purpose of this expedition the two boats were one. The object and purpose of this expedition were to take the passengers and baggage and the Eugene herself to the port of St. Michaels. This combined expedition failed and why is not a separable and integral part of this combined expedition (the Eugene) answerable for the results of failure? Had the Bristol steamed away by herself with the freight and passengers and the Eugene followed at another time with neither freight nor passengers the opinion of the Court would cover the case. But they went tied together as one boat. If they were tug and tow and one vessel it is difficult to escape from the conclusion that any part of that vessel is liable. The lien in admiralty, where it

exists, binds the whole ship, her furniture, apparel and tackle. If the Bristol and Eugene had both been in the jurisdiction of the Court they would have both been liable. If the Bristol alone had been here she would have been liable; if one of her life boats had come into the jurisdiction it would have been liable. The Eugene herself was but a part of the combined boat, and she too, it appears to us, should be liable.

For these reasons we respectfully urge that in a case so important to the appellees the Court will grant us a rehearing.

Respectfully submitted,

JOHN C. HOGAN AND
PATTERSON & EASLY,
Proctors for Appellees.

We the undersigned Proctors for Appellees herein do hereby certify, that in our judgment the foregoing petition for rehearing is well founded in law and fact, and said petition is not interposed for delay.

JOHN C. HOGAN AND
PATTERSON & EASLY.